IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 12278 of 2004

Between:

M/s Classic Lodge (Service Connection bearing No.K2-3910 in the name of M/s Maheswari Constructions), 5-8-112 to 113.2nd Floor 21st Century Complex Nampally Hyderabad rep by its proprietor Abdus Samee Khan.

..... PETITIONER

AND

1 Transmission Corporation of A.P. Limited (A.P Transco) rep by its Chairman and Managing Director Vidyut Soudha Khairatabad, Hyderabad.
2 The Provisional Assessing Officer/Assistant Divisional Engineer Distribution XXIII City-1 Central Power Distribution Company of A.P.Limited (A.P. Transco) 4th Floor A.P. State Warehousing Corporation Building Urdu Hall Lane, Hmayat Nagar, Hyderabad-500029.
3 The Divisional Engineer, Assessment-1 Central Power Distribution Company of A.P.Limited (A.P. Transco) 4th Floor A.P. State Warehousing Corporation Building Urdu Hall Lane, Hmayat Nagar, Hyderabad-500029.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction one in the nature of writ of mandamus declaring the provisional assessment order in letter No.ADE/OP/C1/23/HYD/Pillferage/D.No.45/A/04 dated 24.4.2004 of the 2nd respondent as illegal, arbitrary, unjust and contrary to the condition No.39..7.4.3. fo the Terms and conditions of Supply and consequently set aside the same and further direct the 3rd respondent to transfer the case to the jursidictional special

tribuanl constituted under the provision of section 49-C of the Indian Electricity (a.P. Amendment) Act 2000 and pass.

Counsel for the Petitioner:MR.D.V.NAGARJUNA BABU

Counsel for the Respondent No.: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court at the admission stage made the following ORDER:

This writ petition is filed by the petitioner aggrieved by the action of the respondents in disconnecting the power supply to the petitioner on the premise that he failed to pay the amount as per the provisional assessment dated 24.04.2004.

2 . It is stated by the petitioner that the respondents have issued a provisional assessment notice on the premise that the premises of the petitioner was inspected on 31.12.2003 at 10.15 p.m. and certain irregularities were found. Basing on that a provisional assessment has been made determining the liability towards the alleged loss of power on account of pilferage at Rs.74,418/-. According to the petitioner, the said amount was assessed by the respondents by taking the alleged period of pilferage from 31.12.2002 to 31.12.2003 i.e., for a period of 12 months and further the penal rates were applied at three times the normal tariff rate and thus arrived at to the above referred amount and accordingly a demand notice was issued directing the petitioner to deposit 50% of the assessed amount.

3. The learned counsel for the petitioner raised two objections. Primarily, that under Section 126 (5) of the Electricity Act, 2003 (for short ‘the Act’) with reference to non-domestic and non-agricultural services, the period for the alleged pilferage of power could be determined only for six months and not more than that. Again under sub-section (6) of Section 126 of the Act, the Department is entitled to charge at 1½ times the tariff rates. But, however, the respondents have computed the alleged pilfered power by taking 12 months period and at three times the normal tariff. Therefore, if it is properly assessed, it comes to only ¼ of the amount assessed as per provisional assessment notice. In addition, the learned counsel also contended that as per the Judgment of a Division Bench of this Court, the respondents are not entitled to disconnect the power supply for failure to pay the demanded amount as per the provisional assessment, unless and until a final assessment is made, after giving the petitioner an opportunity to represent his case. Therefore, the petitioner sought for a direction to the respondents to restore the supply of power, pending final assessment. The learned counsel also stated that if the final assessment is made,

the petitioner is liable to pay only 1/3rd of the finally assessed amount for preferring appeal against the said final assessment order. Hence, the present writ petition.

4. Heard learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5. Admittedly, the inspection has taken place after the new Act came into force, as per which, the respondents are entitled to take the period of six months for the presumption of alleged pilferage of power and not more than that. Further, the rates chargeable for the alleged pilfered power is at 1½ times the normal rate.

6. In that view of the matter there is merit in the contention of the petitioner that the assessed amount determined by the Department is four times the normal amount that could be assessed against the petitioner. Further, in view of the judgment of the Division Bench of this Court, the respondents are not entitled to disconnect the power supply for non-payment of the amount at this stage and accordingly, the impugned order of provisional assessment as to the quantum towards the loss of power, is set aside, in view of the incorrect assessment. However, it is open to the assessing authority to give opportunity to the petitioner and make a final assessment at an early date and serve the demand notice on the petitioner.

7. The writ petition is accordingly disposed of at the admission stage directing the respondents to restore the power supply to the petitioner forthwith.

16.07.2004

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To

1 The Chairman and Managing Director, Transmission
Corporation of A.P. Limited (A.P Transco)
Vidyut Soudha Khairatabad, Hyderabad.
2 The Provisional Assessing Officer/Assistant Divisional Engineer
Distribution XXIII City-1 Central Power Distribution Company
of A.P.Limited (A.P. Transco) 4th Floor A.P. State Warehousing

Corporation Building Urdu Hall Lane, Hmayat Nagar, Hyderabad-500029.

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